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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Dog Training Elite Franchising LLC,

No. CV-24-01861-PHX-SMM

10 Plaintiff,

**ORDER**

11 v.

12 Unbound Ventures LLC, et al.,

13 Defendants.  
14

15 Before the Court is Defendants Condor Man Inc. and Neal Mestas' Motion to  
16 Compel Arbitration and Motion to Stay Proceeding (Doc. 14), Defendants' Reply in  
17 Support of that Motion (Doc. 19), Plaintiff's First Amended Complaint (Doc. 18), and the  
18 parties' Joint Status Report (Doc. 22). The Court finds that Plaintiff's First Amended  
19 Complaint is the operative complaint and denies Defendants' Motion to Compel  
20 Arbitration and Stay Proceedings as moot.

21 **I. PROCEDURAL BACKGROUND**

22 Plaintiff, Dog Training Elite Franchising, LLC, brought at suit against several  
23 Defendants, including Defendant CondorMan Inc. ("CondorMan") and Defendant Neal  
24 Mestas ("Mestas"). (Doc. 1). The Complaint alleged, among other things, Civil  
25 Conspiracy, which is the only claim brought against CondorMan and Mestas. (Id.) In  
26 response to the filing of the Complaint, CondorMan and Mestas filed a Motion to Compel  
27 Arbitration and Stay the Proceeding Pursuant to 9 U.S.C. § 4 of the Federal Arbitration  
28 Act. (Doc. 14).

The parties filed a Stipulation with the Court requesting Plaintiff be given an

1 extension of time to file a Response to the Motion to Compel and Stay, which the Court  
 2 granted. (Docs. 16; 17). However, instead of filing a Response, Plaintiff filed its First  
 3 Amended Complaint. (Doc. 18). The deadline to file a Response passed, and Defendants  
 4 filed a Reply in Support of their Motion. (Doc. 19).

5 Accordingly, the Court issued an Order directing the parties to file a Status Report  
 6 to inform the Court why a Response was not filed. (Doc. 20). In that Status Report, Plaintiff  
 7 states it was its understanding that it could file a First Amended Complaint as a matter of  
 8 right, requiring the Defendants to file a new Motion to Compel and Stay based on the new  
 9 operative Complaint. (Doc. 21). Meanwhile, Defendants' position is that 9 U.S.C. § 4  
 10 requires this Court to rule on the Motion to Compel, notwithstanding the filing of an  
 11 Amended Complaint. (*Id.*)

## 12 II. ANALYSIS

13 The Court now addresses the impasse. To support their position, Defendants point  
 14 to the text of the Federal Arbitration Act. 9 U.S.C. § 4 ("The court shall hear the parties,  
 15 and upon being satisfied that the making of the agreement for arbitration or the failure to  
 16 comply therewith is not in issue, the court shall make an order directing the parties to  
 17 proceed to arbitration in accordance with the terms of the agreement."). Defendants state  
 18 that "the use of the word 'shall' 'creates an obligation impervious to judicial discretion.'" Smith v. Spizzirri, 601 U.S. 472, 476 (2024) (quoting Lexecon Inc. v. Milberg Weiss  
 19 Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998)). Accordingly, Defendants argue, the  
 20 filing of an Amended Complaint does not circumvent the Court's obligation to rule on the  
 21 Motion. (Doc. 19 at 4). Conversely, Plaintiff characterizes the Motion to Compel and Stay  
 22 as akin to a Rule 12(b) motion under the Federal Rules. (Doc. 21 at 2). After such a 12(b)  
 23 motion, a plaintiff is granted two options: to respond to the motion or to correct deficiencies  
 24 in a pleading. (*Id.*).

25 Under Federal Rule of Civil Procedure 15(a)(1)(B), a party may amend its pleading  
 26 once as a matter of right within "21 days after service of a responsive pleading or 21 days  
 27 after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P.  
 28

1 15(a)(1)(B).

2 The Ninth Circuit has upheld district court orders granting a motion to compel  
3 arbitration brought under Rule 12(b)(3). See, e.g., Balen v. Holland Am. Line Inc., 583  
4 F.3d 647, 652 (9th Cir. 2009). Other Circuit Courts have held similarly. See, e.g., Grasty  
5 v. Colorado Tech. Univ., 599 F. App'x 596, 597 (7th Cir. 2015) (concluding that “[m]otions  
6 to compel arbitration ... are brought properly under Federal Rule of Civil Procedure  
7 12(b)(3)”). Finally, other courts in this Circuit have ruled similarly. Cancer Ctr. Assocs.  
8 for Research and Excellence, Inc. v. Phila. Ins. Cos., No. 1:15-CV-00084 LJO MJS, 2015  
9 WL 1766938, at \*2 (E.D. Cal. 2015) (“[C]ourts have held that a Rule 12(b)(1) motion to  
10 dismiss for lack of subject matter jurisdiction ‘is a procedurally sufficient mechanism to  
11 enforce [an] [a]rbitration [p]rovision.’”); Coup v. Scottsdale Plaza Resort, LLC, 823 F.  
12 Supp. 2d 931, 938 (D. Ariz. 2011) (motion to compel arbitration may be properly brought  
13 pursuant to Rule 12(b)(1) or 12(b)(6)); Cedars-Sinai Med. Ctr. v. Global Excel Mgmt.,  
14 Inc., No. CV 09-3627, 2010 WL 5572079, at \*2 (C.D. Cal. 2010); Lemberg v. LuLaRoe,  
15 LLC, No. EDCV1702102ABSHKX, 2018 WL 6927836. at \* 3 (C.D. Cal. 2018).

16 The Court follows the holding in Lemberg, which found that while “courts may  
17 disagree as to whether a motion to compel arbitration constitutes a motion pursuant to  
18 Rules 12(b)(1), 12(b)(3), or 12(b)(6), courts generally agree that such a motion is a Rule  
19 12(b) motion.” Lemberg, 2018 WL 6927836 at \*3. Therefore, while a Motion to Compel  
20 may not fall directly into one of Rule 12(b)’s subsections, it is a responsive pleading, which,  
21 under Rule 15(a)(1)(B), grants Plaintiff leave to amend as a matter of right. See, e.g., id.;  
22 see also, Armendariz v. Ace Cash Express, No. 3:13-CV-00590-BR, 2013 WL 3791438,  
23 at \*1 (D. Or. July 19, 2013) (finding that a motion to compel arbitration “suffices as a  
24 ‘responsive pleading’ to Plaintiff’s Complaint or as an unenumerated motion under Rule  
25 12(b), and, therefore, Plaintiff was permitted to file a First Amended Complaint pursuant  
26 to Rule 15(a)(1)(B) without first obtaining leave of Court or consent of Defendant.”).

27 Further, the Supreme Court has long held that “Rule 15(a) declares that leave to  
28 amend shall be freely given when justice so requires; this mandate is to be heeded.” Foman  
v. Davis, 371 U.S. 178, 182 (1962). With this legal principle in mind, the Court holds that

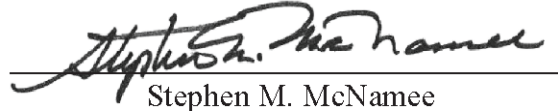
1 Plaintiff's FAC is the operative complaint in this action.

2 Because Defendants CondorMan Inc. and Neal Mestas' Motion to Compel  
3 Arbitration is targeted at a previous iteration of the Complaint in this action, the Motion to  
4 Compel is denied as moot and thus if Defendants seek to compel arbitration, Defendants  
5 should file a Motion to Compel Arbitration based upon Plaintiff's FAC.

6 Accordingly,

7 **IT IS ORDERED denying** the Motion to Compel as moot. (Doc. 14).

8 Dated this 26th day of March, 2025.

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12 Stephen M. McNamee  
13 Senior United States District Judge  
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